IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ petition No,. 3880 of 2001

Karam Chand ..... Petitioner.

Versus

Board of Revenue and others..... Respondents.

Date of decision: 22, December 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant, J.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Misc. Writ Petition No. 3880 of 2001 (M/S)
(Old No. 32560/1996)

Karam Chand
S/o Lakkha Ram
R/o Village Padampur
Sodia, Tehsil Kala
Dhangi Post Officer Bali
Bokhara, District Nainital .....Petitioner

Versus

1. Board of Revenue
   U.P. at Lucknow.
2. The Additional Commissioner
   Kumaun Division, Kumaun
   District-Nainital.
3. The Sub Divisional Officer
   Bhawar, Haldwani
   District Nainital.
4. The State of U.P. through Collector
   Nainital.
5. The Forest Department of U.P.
   through Divisional Forest Officer
   Ram Nagar, District Nainital.
6. Ramesh Chandra Sharma
   S/o of Shri Shankar Lal Sharma
   R/o Shanker Chowk, Nainital.

.....Respondents

Mr. Alok Singh, learned Sr.counsel assisted by
Mr. Bhupendra Bisht, learned counsel for the Petitioner.
Mr. U.P.S. Negi, Addl. Advocate General for the State.
Mr. J.C. Pandey, learned counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under article 226 of the Constitution of India, the petitioners have sought writ in the nature of certiorari quashing the judgment and order

dated 25.06.1984, passed by Addl. Commissioner Commissioner, Kumarun Division, Nainital (respondent no. 2) and judgment and order dated 17.08.1996 passed by the Board of Revenue (respondent no. 1).

2. Brief facts of the case as narrated in the writ petition are that Shri Shankar Lal (now deceased), father of respondent no. 6 was allotted 284 bighas, 14 biswas land by the government and was recorded as hereditary tenant in 1362 fasli. It is alleged in the petition that out of the allotted land, Shri Shankar Lal transferred 64 bighas of land to Bhudan Samiti on 30th November, 1956, and he was ejected from 109 bigha, 14 biswa land by the Forest Department as such he remained hereditary tenant in respect of only 75 bighas of land. Later settlement took place and the area got further reduced by one bigha and 5 biswa. The petitioner has further alleged that when U.P. Zamindari Abolition and Land Revenue Act, 1950 was made applicable in Kumaun Division w.e.f. 1.07.1969, Shri Shankar Lal became Sirdar in respect of the said remaining land of 73 bighas and 15 biswas. On depositing 20 times of land revenue, he became bhumidhar of the same. On 04.01.1971, Shri Shankar Lal transferred entire land of 73 bigha and 15 biswa in favour of Smt. Budha, Smt. Laxmi Bai and Shri Amir Chand. Accordingly, names of Smt. Budha, Smt. Laxmi Bai and shri Amir Chand was recorded in the revenue records. Petitioner, Shri Karam Chand is son of said transfree, Shri Amir Chand. Shankar Lal filed an original suit no. 4 of 1971 before Learned Munsif, Nainital for the relief of mandatory injunction initially for 77 bigha, which later amended to be 144 bighas of the land.

Learned Munsif, Nainital decreed the suit in respect of 144 bighas of land on 27.01.1973. the state of U.P. went in appeal against said order and the appeal (No. 22 of 1973) was allowed by learned II Addl. District Judge, Nainital on 30.04.1976. There after Shri Shankar Lal filed Second Appeal no. 1128 of 1976 before the Allahabad High Court which was decided on 25.04.1979, whereby the second appeal was allowed and the judgment of the trial court was upheld in favour of Shri Shankar Lal. Petitioner's father, Shri Shankar Lal there after applied for recording of his name as bhumidhar in the revenue record before Sub-Divisional Officer, Haldwani, claiming himself to be hereditary tenant of 232 bigha, 8 biswa of land out of 248 bigha, 14 biswa, which was allowed vide order dated 15.02.1980. However, Peshkar submitted a report on 06.08.1980, whereby it was mentioned that material facts were concealed by Shri Ramesh Chandra (son of Shankar Lal) as to the area of land held by him on which the Sub-Divisional Officer, vide his order dated 31.05.1983, recalled his earlier order dated 15.02.1980, after hearing the respondent no. 6 (Ramesh Chandra). Aggrieved by said order, Shri Ramesh Chandra filed a revision no. 10/151 of 1982-83 before the Commissioner, which was decided by the learned Addl. Commissioner, recommending revision to the Board of Revenue on 25.06.1984 for setting aside order dated 31.05.1983. The Board of Revenue allowed the revision of respondent no. 6, Ramesh Chandra Sharma against which the present writ petition has filed by the petitioner.

3. On behalf of the State of U.P., a counter affidavit was filed in which it was admitted that initially 284 bigha and 14 biswa was allotted to Shri Shankar Lal. It is also admitted on behalf of the government that out of said land, 64 bigha was gifted to Acharya Vinoba Bhave. It is not disputed in the counter affidavit that a suit was filed by the father of respondent no. 6 before Munsif, Nainital which was confirmed by the High Court in second appeal. But simultaneously, it is stated that Shanker Lal did transfer 73 bigha 15 biswa of land by way of sale deed and was ejected from 109 bigha and 14 biswa of land. It is alleged in the counter affidavit that Shanker Lal, father of respondent no. 6 sought mutation in the revenue record for wrongful gain by claiming himself to be bhumidhar in respect of 232 bigha 8 biswa of land.

4. Main contesting respondent no. 6, has filed his own counter affidavit in which it has been stated that the land allotted to father of answering respondent was wrongly declared forest land learned Munsif rightly decreed the suit for removing the pillars of the forest land, leaving the area clamed by the answering respondent in his suit no. 4 of 1971. It is alleged that petitioner has concealed the fact that he has already moved a review application before the Addl. Commissioner, Kumaun Division on 7.10.1996 and simultaneously filed this writ petition. It is alleged in the counter affidavit of respondent no. 6 that his father has every right to get the revenue record corrected as per the Patta dated 13.09.1951 given in his favour. It is also stated in the counter affidavit by the answering respondent that the petitioner has no locus standi in the writ petition and he

should have filed a suit, challenging the decision of the orders passed under section 33 read with 39 of U.P. Land Revenue Act. 1901.

5. I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed there to.

6. Shri J.C. Pandey, Learned counsel for the respondent no. 6, raised preliminary objection that the petitioner has no locus standi to file the writ petition as he was not the party before the proceedings challenged. In reply to this learned counsel for the petitioner, drew my attention to article 227 of the Constitution of India and submitted that High Court can set right suomotu the glaring mistakes committed by the courts under its superintendence. I agree with the submission of the learned counsel for the petitioner that in the matters of grave error of law or jurisdictional error which causes material injustice, the High Court has ample power to set right them under article 226 read 227 of the Constitution of India if the same is brought to its notice.

7. Copy of the decree passed in original suit no. 4 of 1971 shows that the area of land in suit No. 4 of 1971 was only 144 bigha while the respondent no.6 on its basis sought correction records for entry of his name over 232 bighas 8 biswas of land. During arguments, learned counsel for the respondent no. 6 could not deny if his father has not transferred 71 bigha land out of 248 bigha allotted to him originally to Smt. Budha, Smt. Laxmi Bai and Shri Amir Chand (father of the petitioner). In para 12 of the counter affidavit of respondent no. 6, only this much is mentioned that the facts are denied as the matter has

already been dealt in the judgment of the civil court. For the best reasons known to the respondent no. 6, he has not filed copy of the judgment of Munsif who decreed suit no. 4 of 1971. On the facts as it appear on the record of this case, from no stretch of imagination can it be said if the respondent no. 5 can seek correction in revenue record, claiming himself as bhumidhar or occupant over 232 bigha 8 biswa of land when actually he got decree in respect of only 144 bigha of land. In view of section 331 of U.P. Zamindari Abolition and Land Reform Act, 1950, this Court is of the opinion that as to the bhumidhar rights, the civil court has no jurisdiction to declare a person bhumidhar in respect of agricultural land. However, since the decree passed by Munsif stood confirmed vide order dated 25.04.1979, passed by Allahabad High Court in second appeal no. 1128 of 1976 as such this Court cannot comment further in the matter. Facts as it stand, the respondent no. 6 or his father, could have sought correction in revenue records only in respect of land held by him as bhumidhar. And from no stretch of imagination, correction in revenue record could have been sought in respect of 232 bigha 8 biswa of land. Therefore, this Court is of the view that both the impugned order passed by the respondent no. 1 and 2 cannot be sustained in the eyes of law as learned Sub Divisional Officer rightly recalled his order dated 15.02.1980, on coming to know of the mistake.

8. Learned counsel for the respondent no. 6 submitted before me that where the boundaries and area are in conflict, the boundaries shall prevail. He drew my attention to the principle of law laid down in Jagdish Prasad

Vs. Mahendra Prasad, 1997 (2)A.W.C.2.244 (NOC). Had it been a shot conflict, this Court would have agreed with the submission of the learned counsel for the respondent no. 6 but where specifically are of each and every plot is shown in the decree which shows that total area of land in suit is 144 bigha, boundaries cannot have any relevance particularly to stretch the same to 232 bigha 8 biswa. If a person's plot is adjoined by Forest in a particular direction and if the boundaries are made to prevail, by accepting such submission, a person can claim and include a large portion of the forest. The law does not permit the plaintiff to justify such inclusion under the garb of conflict between the area and the boundary.

9. Learned counsel for the respondent also drew my attention to the principle of law laid down in Mahendra Kumar Vs. Collector 2002 (93) R.D. 392 and it was submitted that mutation proceedings are summary in nature and the person aggrieved has remedy to file the suit as such the writ petition is not maintainable. Had it been a case of really mutation in the sense as it is referred in the above mentioned case, I would have accepted the contention advanced on behalf of respondent no. 6 but in the present case it is rather a correction of revenue record on the basis of decree passed by the Civil Court. Not only this, an attempt appears to have been made to get the name entered as bhumidhar over 232 bigha 8 biswa of land by getting an injunction in respect of land of 144 bigha. Such kind of attempt which is in gross violation of law, cannot be permitted to perpetuate or succeed and in the opinion of this Court, it is the fit case where power under article 226

read with the 227 of the Constitution of India deserves to be exercised.

10. In the circumstances, in view of above discussions, the writ petition is allowed. Impugned order dated 25.06.1984 and 17.08.1996, passed by respondent no. 2 and 1 respectively are quashed, and the order dated 31.05.1983, passed by Sub-Divisional Officer is upheld. No order as to costs.

(Prafulla C. Pant, J.)

Dt: December 22, 2004
Sweta